



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 584-99

13 October 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 7 May 1993 for six years. On 17 January 1997 you were convicted by civil authorities of driving under the influence of alcohol with a blood alcohol content (BAC) of .17. On 9 October 1997 you received nonjudicial punishment (NJP) for disobedience and two specifications of adultery. The punishment imposed included forfeiture of pay and a reduction in rate to LN2 (E-5). Seven days later you were notified of separation processing due to your commission of a serious offense. An administrative discharge board (ADB) met on 5 December 1997, found that you had committed misconduct and recommended a general discharge. By a 2 to 1 vote, the ADB recommended that the discharge be suspended for six months. Subsequently, the commanding officer disapproved the recommendation for suspension and directed a general discharge. The commanding officer stated, in part, as follows:

... Subsequent to the conviction for driving under the influence, (she) received both formal and informal counseling on numerous occasions for coming to work with alcohol on her breath, inappropriate personal behavior at work, and on substandard work performance. (She) was given full opportunity for rehabilitation.

She attended alcohol rehabilitation (PREVENT) as well as anger and stress management classes. Despite the counseling and classes, (her) performance and behavior continued to decline.

(She) admitted having a sexual relationship with a Chief Petty Officer while both were married to others. In July 1997, (she) began a second affair with a physically abusive man. Her family brought this matter to the command's attention because they feared for her safety. As a result of his relationship, (she) received a broken nose, black eyes, a broken toe, and several bruises on various parts of her body.

Her Department Head issued (her), a lawful order to have no contact with the abusive boyfriend. On several occasions (she) violated the "no contact" order which was issued for her safety and voluntarily returned to the abusive boyfriend's home. During the administrative separation board (she) admitted to continuing to disobey the lawful order and continuing to visit her second boyfriend.

(She) has frustrated all assistance from the command by her actions and behavior, (she) has demonstrated that she no longer possesses the potential or the drive to be a productive member of the United States Navy. Therefore, I disapproved the Board's recommendation for suspending the discharge and separated her with a General Discharge under honorable conditions. ...

You were issued the general discharged on 16 January 1998. At that time you had completed 14 years, 8 months and 2 days of active service.

You contend that the commanding officer should have approved the suspension of your discharge, which would have allowed you to reach 15 years service and be eligible for retirement under the provisions of the Temporary Early Retirement Authority (TERA). You contend that you received disparate treatment because the Navy chief and the civilian were not punished for their misconduct but you were.

The Board believed that your civil conviction for driving under the influence, the NJP offenses, and the testimony during the ADB showing that you did not improve your behavior after counseling by your superiors, were sufficient to support the decision to process you for an administrative discharge. Likewise, the ADB could conclude that you had committed misconduct which warranted discharge from the Navy. There is no evidence in the record, and you have submitted none, to show that you received disparate

treatment then the other individuals involved. However, even if your contention was true, the Board did not believe that it would excuse your misconduct.

Regulations allow for the commanding officer to disapprove a recommendation that a discharge be suspended. In your case, the Board noted that the commanding officer considered your continuing misconduct and performance problems in his decision to disapprove the recommendation for suspension, and concluded that there was no abuse of discretion in this matter. Finally, the Board noted that retirement under TERA was not a right, but was a force reduction tool and not everyone who applied was approved for retirement. Retirement under TERA was not offered to individuals being processed for an administrative separation.

The Board concluded that the general discharge was proper as issued and that reinstatement in the Navy to qualify for retirement under TERA was not warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director